

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

MAY 14 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0051-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
TIMOTHY G. OSSANA,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-62031

Honorable Leslie Miller, Judge

PETITION FOR REVIEW DISMISSED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Timothy G. Ossana

Caruthersville, MO
In Propria Persona

V Á S Q U E Z, Judge.

¶1 Pursuant to a plea agreement, petitioner Timothy Ossana was convicted of aggravated assault with a deadly weapon or dangerous instrument. He was sentenced in

1999 to an aggravated prison term of five years. He challenges the trial court's order summarily dismissing two notices of post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P.

¶2 Ossana first sought post-conviction relief in April 2000, challenging the aggravated prison term and raising a related claim of ineffective assistance of counsel. The trial court denied relief. On July 13, 2009, Ossana again filed a notice of post-conviction relief. The court denied the notice as untimely filed, although it erroneously referred to the notice as a petition, as it did with respect to successive notices. On October 6, Ossana filed another notice of post-conviction relief, which the court denied on October 14, 2009. And on January 4, 2010, he filed yet another notice of post-conviction relief, which the court denied on January 8.

¶3 In his petition for review, which was filed on February 22, 2010, Ossana contends the October 14, 2009 and January 8, 2010 notices were improperly ruled on by Jayne Ruhberg, Judge Miller's Judicial Administrative Assistant, rather than the judge.¹ Rule 32.9(c) provides that a petition for review must be filed within thirty days after the court's "final decision." Although the trial court may extend the time for filing a petition for review, *see* Rule 32.9(c), based on the record before us, it does not appear Ossana sought or received an extension. Insofar as the petition seeks review of the October 14

¹Although, as explained below, we deny review of the orders, we note, in any event that, although Ruhberg's typed name appears at the bottom of the orders, reflecting, presumably, that she prepared them, Judge Miller clearly entered the orders and ruled on the notices. Despite the fact that Judge Miller did not sign the orders, which the rule does not require, *see* Rule 32.9(c), her name appears in the top left portion of the orders reflecting the case was assigned to her and the orders both begin with the words, "in chambers."

order, it is patently untimely. The order dated January 8, 2010, appears to have been filed with the clerk on January 12; thus, the petition is untimely as to that order as well.

¶4 Because the petition for review is untimely, we deny review. Further, to the extent Ossana also seeks review of the trial court's October 6, 2009 denial of a notice of post-conviction relief filed in cause number CR-60843, the petition relates only to cause number CR-62031. We therefore deny review of that order.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge